

In the Drawings:

The attached sheets of formal drawings include renumbering Fig. 9 as Fig. 9a and adding Fig. 9b. Support for Fig. 9b can be found in the substitute specification at page 6, lines 7-10.

Attachment: 9 replacement sheets

REMARKS

Support for the amendment to claim 2 can be found in the substitute specification at page 4, lines 16-21. Support for the subject matter of the amendment to claim 18 and new claim 24 can be found in the substitute specification at page 10, line 34 through page 11, line 2. Support for the subject matter of claim 25 can be found in the drawings and in the substitute specification at page 4, lines 25-28. Support for the amendment to claim 23 can be found in the substitute specification at page 4, lines 16-21. No new matter has been added. Claims 1-7, 9-18, and 20-25 are pending.

In the Office Action, corrected drawings were required. Applicants submit formal drawings herewith that clearly demonstrate the invention.

The specification was objected to. The Examiner asserts that the specification and the drawings do not support a device with two drill gauges as recited in claim 13. Applicants respectfully traverse the objection. Because claim 13 is part of the specification as an original claim, the specification necessarily supports the subject matter of claim 13. In addition, a device with two drill gauges is clearly disclosed in the substitute specification at page 6, lines 7-10. Further, applicants have added FIG. 9b illustrating this embodiment of the device and amended the specification accordingly. Support for FIG. 9b is found in the substitute specification at page 6, lines 7-10.

Claims 1-7, 9-18, 20, 22, and 23 were rejected under 35 USC 102(b) as anticipated by Michelson (U.S. Patent No. 6,159,214). Applicants respectfully traverse this rejection. To anticipate a claim, the reference must teach every element of the claim. MPEP 2131. Claim 1 recites "the intervertebral plate comprises at least one X-ray marker extending in an anterior-posterior direction for positioning the intervertebral plate in the intervertebral space." Michelson does not teach this element of claim 1. The Examiner argues that any edge of Michelson's distractor could be used as an X-ray marker. However, Michelson's disclosure could only teach this element of claim 1 if such an edge would appear in an X-ray such that it could be used to position an intervertebral plate in intervertebral space. This is not the case, because Michelson's milling block 100 and distractor holder 158 are larger than and encompass the distractor 151 and its bullet-

shaped end 154. They therefore would cover it completely upon X-ray in the AP direction, and the distractor edges and end would not be visible in the X-ray. Michelson's distractor cannot be used without its associated milling block and distractor holder.

Because Michelson does not teach or suggest an intervertebral plate comprising an X-ray marker extending in an AP direction for positioning the intervertebral plate in the intervertebral space, claim 1 is not anticipated by Michelson and the rejection must be withdrawn. Claims 2-7, 24, and 25 depend from claim 1 and are therefore allowable for the same reason. Further, claim 2, as amended recites that "the intervertebral plate has a size and shape adapted to allow the plate to adopt a position that is generally centered with respect to the intervertebral space." This element is not taught by Michelson, which is silent about its intervertebral plate adopting a centered position. New claim 24 recites that "a width of the intervertebral plate is at least about 70% of the width of the intervertebral space." This element is similarly not taught by Michelson as explained below. Claim 25 recites "surfaces of the intervertebral plate that contact the vertebral bodies are substantially smooth." Such smooth surfaces permit relative movement of the intervertebral plate along bone or cartilage surfaces to allow correction of the adjustment instrument position. Michelson does not disclose such smooth surfaces. Indeed, the leading edge 154 of Michelson's distractor 151 contacts the bone or cartilage surface with sharp edges that prevent relative movement.

Michelson does not anticipate claim 9 for the same reason that it does not anticipate claim 1. It does not teach the intervertebral plate or the adjustment rod comprising a marking detectable in an anterior-posterior X-ray beam path. Claims 10-15 depend from claim 9 and are therefore allowable for the same reason.

Regarding claim 16, Michelson does not teach a non-rotational fit of complementary surfaces of an adjustment rod and a guide device. The non-rotational fit alleged by the Examiner is not based on complementary surfaces of an adjustment rod and a guide device, but rather a distractor holder 758 and the milling block 700, neither of which is alleged to be a guide device. The two scenarios are wholly different, as the present device seeks to prevent relative rotation of the

adjustment rod and the device that guides it. Claim 17 depends from claim 16 and is allowable for the same reason.

Regarding claim 18, Michelson does not teach an intervertebral plate having a width that is at least about 70% of the width of the intervertebral space. Michelson's specification is silent regarding the relative widths of the intervertebral plate and the intervertebral space, and the figures do not show the relative width as claimed. Regarding claim 20, Michelson does not teach "a set of rasps assigned to each prosthesis shape, the largest rasp being essentially the same as the prosthesis shape and the other rasps being progressively smaller than the largest rasp." The Examiner points to a general disclosure in Michelson of "rasps in a variety of shapes and sizes." Such vague disclosure of a variety of shapes and sizes simply cannot anticipate "a set of rasps assigned to each prosthesis shape, the largest rasp being essentially the same as the prosthesis shape and the other rasps being progressively smaller than the largest rasp."

Regarding claim 22, Michelson does not disclose connecting a distraction forceps to pins inserted into vertebrae after pushing a hub of a guide device onto an adjustment rod projecting from the intervertebral plate. Michelson's distraction forceps are connected prior to pushing the guide device onto the adjustment rod.

For the reasons stated above, the rejection under 35 USC 102(b) has been overcome and should be withdrawn.

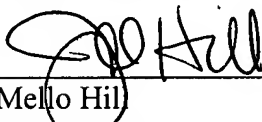
Claim 21 was rejected under 35 USC 103(a) as unpatentable over Michelson in view of Jacobson (U.S. Patent No. 4,545,374). To establish prima facie obviousness, the references must teach or suggest all of the claim limitations. MPEP 2143. Claim 21 recites "at least one X-ray marker adapted to position the intervertebral plate in the intervertebral space." As stated above with respect to claims 1-8 and 9-15, Michelson does not teach or suggest such a limitation. Jacobson does not remedy this deficiency. Thus, prima facie obviousness has not been established and the rejection under 103(a) must be withdrawn.

In view of the above, the pending claims are in condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

If the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. **246472003920**.

Dated: December 7, 2006

Respectfully submitted,

By 
Jill DeMello Hil
Registration No.: 42,477
MORRISON & FOERSTER LLP
1650 Tysons Blvd, Suite 300
McLean, Virginia 22102
(703) 760-7718

Attachments